

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IOAN GHILDUTA

Plaintiff,

-against-

THE TRUMP CORPORATION and MICHAEL P.
FISHMAN, as President of LOCAL 32B-32J,
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO

**NOTICE OF REMOVAL
OF A CIVIL ACTION**

04 CV 7494
ECF Case
Judge Jones

Defendants.

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Defendant MICHAEL P. FISHMAN, as President of Local 32B-32J, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO (“Local 32BJ” or “Union”), by its attorneys, submits this petition for removal pursuant to 28 U.S.C. §§ 1441 and 1446.

1. Plaintiff Ioan Ghilduta (“Mr. Ghilduta”) commenced an action in the Supreme Court of the State of New York, County of New York, entitled *IOAN GHILDUTA, Plaintiff v. THE TRUMP CORPORATION and MICHAEL P. FISHMAN, as President of LOCAL 32BJ-32J, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Defendants*, bearing Index No. 112090/04.
2. Plaintiff’s Summons and Complaint were served on Defendant Local 32BJ on August 31, 2004. Copies of the same are annexed as Exhibit A.
3. The Union is a labor organization within section 2(5) of the Labor Management Relations Act (“Act”), 29 U.S.C. § 152(5), and represents employees “in an industry affecting commerce” within the meaning of section 301(a) of the Act, 29 U.S.C. § 185(a). The Union’s headquarters are at 101 Avenue of the Americas, New York, New York 10013.

4. Mr. Ghilduta's former employer, The Trump Corporation ("Trump" or "Employer"), and the Union were parties to a collective bargaining agreement ("the Agreement") with effective dates of April 21, 2000 through April 20, 2003, which governed the terms and conditions of Mr. Ghilduta's employment. Article VI of the Agreement provides for arbitration of disputes arising under the Agreement. Article IV provides that employees shall not be "unjustly" discharged.
5. According to his complaint, Mr. Ghilduta filed a grievance concerning his termination on or about December 20, 2002 from his position as an elevator operator at a residential building located at 725 Fifth Avenue, New York, New York. Plaintiff's action is one for a breach of the Agreement by Trump, and breach of the duty of fair representation by the Union for allegedly failing to properly represent him in regard to his termination grievance.
6. The Agreement is a "contract[] between an employer and a labor organization representing employees in an industry affecting commerce." 29 U.S.C. § 185(a).
7. Because resolution of Mr. Ghilduta's claims depends upon the interpretation of the Agreement, this action is a civil action over which this Court has jurisdiction, arising under section 301(a) of the Act, 29 U.S.C. § 185(a) which in material part provides:

Suits for violation of contracts between an employer and an organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount of controversy or without regard to citizenship of the parties.
8. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

9. There have been no proceedings in the State Court action, and defendants have not served an answer, made motions, or made any appearance or argument in that action.
10. Defendant Trump consents to removal. Attached hereto as Exhibit B is Trump's written consent.
11. This Notice of Removal is filed within 30 days after receipt by defendant Local 32BJ of the papers annexed as Exhibit A, and before any proceedings thereon were held in the State Court action.

WHEREFORE, defendant respectfully requests that the State Court action be removed from the Supreme Court of the State of New York, County of New York to this Court.

Dated: New York, New York
September 21, 2004

Respectfully submitted,
Office of the General Counsel

By: s/
Katchen Locke (KL3724)

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